

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 37-024-07-1-5-00001
Petitioner: Sara Risner
Respondent: Jasper County Assessor
Parcel No.: 007-01905-00
Assessment Year: 2007

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Jasper County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated November 12, 2008.
2. The Petitioner received notice of the decision of the PTABOA on January 6, 2009.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Board on January 22, 2009. The Petitioner elected to have her case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 30, 2009.
5. The Board held an administrative hearing on June 25, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Sara Risner, Petitioner

For Respondent: Richard Potts, Jasper County Assessor
Earl D. Walton, PTABOA Chairman
William L. Wood, PTABOA member
Don Putt, PTABOA member.¹

¹ Sandra Lackey and Donna Wiseman from the assessor's office were also present.

Facts

7. The subject property is a residential property located at 7670 Graefen Drive, Demotte, in Jasper County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$174,000.²
10. The Petitioner requested an assessment of \$159,900.

Issues

11. Summary of the Petitioner's contentions in support of an error in her assessment:
 - a. The Petitioner contends that the assessment is too high compared to sales of neighboring properties. *Risner testimony*. In support of her contention, the Petitioner presented three separate comparative market analyses (CMAs). *Petitioner Exhibits 1-3*. The first CMA, prepared by McColly Real Estate, estimated the value of Ms. Risner's home to be \$159,000 using sales in 2006. *Risner testimony; Petitioner Exhibit 1*. The Petitioner claims the best comparable sale is her neighbor's property, which sold in February of 2006 for \$129,000, although the comparable house is five years older and 300 square feet smaller than her house. *Risner testimony; Petitioner Exhibit 1 at 6*. The Petitioner also presented CMAs prepared by Century 21 and Remax. *Risner testimony; Petitioner Exhibit 2 and 3*. Those analyses estimate the value of her home to be \$158,000 and \$162,900 respectively. *Id.* All three of the analyses indicate her subdivision is considered inferior to other subdivisions. *Risner testimony*.
 - b. The Petitioner also contends that her land is over-assessed compared to the assessments of vacant lots in her subdivision. *Risner testimony*. In support of this contention, the Petitioner submitted assessment information for six vacant parcels in her neighborhood. *Petitioner Exhibits 5A-5F*. According to Ms. Risner, single lots are assessed at \$11,000 to \$12,000 and a 6.852 acre lot is assessed at \$29,600. *Id.; Risner testimony*. Ms. Risner testified that her lot is $\frac{3}{4}$ acre and is assessed at \$29,400. *Risner testimony; Petitioner Exhibits 4A and 4B*.
 - c. Similarly, the Petitioner argues that her house is assessed higher than any other house in her subdivision. *Risner testimony*. In support of this contention, the Petitioner presented assessment information and photographs

² The Form 115R does not show how the \$174,000 is allocated.

of 26 properties in her neighborhood. *Petitioner Exhibits 7 and 8A-8Z*. Ms. Risner testified that her neighboring properties were assessed for \$56,600 to \$159,900. *Id.*; *Risner testimony*. Her property, however, is assessed for \$174,000. *Id.*

- d. Finally, in her rebuttal argument, the Petitioner contends that the Respondent's comparable properties in Exhibit A-3 are not located in her subdivision and should not be considered by the Board. *Risner testimony*. The Petitioner further argues that the Respondent's Exhibit B should not be admitted because the assessor did not adjust the sales and did not discuss how those properties are comparable to the subject property. *Risner argument*.

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends that the Petitioner's assessment should be returned to its original value of \$190,200. *Potts testimony*. According to Mr. Potts, the PTABOA members reexamined the evidence and believe they made a hasty decision in an attempt to lower Ms. Risner's property taxes. *Id.* In support of his position, the Respondent submitted a memo from the Jasper County PTABOA signed by two of the three PTABOA members. *Respondent Exhibit D*.
- b. Mr. Potts further contends that his evidence supports a \$190,200 assessed value and rebuts the Petitioner's case. *Potts testimony*. In support of this contention, Mr. Potts submitted a chart with sales information for five properties. *Respondent Exhibit A-3*. According to Mr. Potts, he assumed that property values changed .5% per month, or 6% per year, and adjusted the five sales accordingly. *Potts testimony*. Mr. Potts also adjusted the sales for differences in living area and garage size resulting in adjusted sales values of \$211,400, \$192,600, and \$220,400 for the comparable sales. *Id.*; *Respondent Exhibit A-3*. Mr. Potts contends he chose \$190,200 because he considered the other two comparable properties to be out of range of normal sales. *Potts testimony*. Mr. Potts further submitted sixteen additional sales to support his \$190,200 valuation. *Id.*; *Respondent Exhibit B*.
- c. In response to the Petitioner's case, Mr. Potts argues that the location adjustments in the Petitioner's CMAs have no merit or proof and are therefore conclusory. *Id.* In addition, Mr. Potts argues that the market value-in-use of the Petitioner's property may be more to her than to another property owner because the property is next door to Ms. Risner's parents. *Potts testimony*.
- d. Finally, the Respondent's witness, Mr. Walton argues that the Petitioner should have used sales and sales information to challenge her assessment. *Walton testimony*. According to Mr. Walton, Ms. Risner cannot prove an error in her assessment by pointing to errors in other assessments. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The compact disk recording of the hearing labeled 37-024-07-1-5-00001 Sara Risner,
 - c. Exhibits:

Petitioner Exhibit 1 – CMA prepared by McColly Real Estate,
Petitioner Exhibit 2 – CMA prepared by Century 21 Realty,
Petitioner Exhibit 3 – CMA prepared by Remax Realty,
Petitioner Exhibit 4A-B – Petitioner’s property record card and new
assessment,
Petitioner Exhibit 5A-F – Vacant land assessment information,
Petitioner Exhibit 6 – GIS location of the Petitioner’s subdivision,
Petitioner Exhibit 7 – Summary of assessed values in the Petitioner’s
subdivision,
Petitioner Exhibit 8A-Z – Assessed values and pictures of houses in the
Petitioner’s subdivision,

Respondent Exhibit A-1 – Introduction,³
Respondent Exhibit A-2 – Analysis of the Petitioner’s appraisal and value
calculation,⁴
Respondent Exhibit A-3 – Assessor’s comparable sales analysis with
adjustments,
Respondent Exhibit B – Sixteen additional comparables with sales
disclosure forms,
Respondent Exhibit C – Assessor’s conclusion,
Respondent Exhibit D – Letter from the Jasper County PTABOA,
Respondent Exhibit E – Assessor’s qualifications,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated April 30, 2009,
Board Exhibit C – Hearing sign-in sheet,

³ Respondent’s Exhibit A-1 and E are listed on the Respondent’s cover sheet but were not submitted to the Board at the hearing.

⁴ The Petitioner objected to the Respondent’s Exhibit A-2 because, Ms. Risner argues, the comparable sales information the Respondent sought to introduce was not presented at the PTABOA hearing. However, neither party is limited to evidence presented at the hearing below. *See* 52 IAC 2-7-1(a) (“a party participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county PTABOA.”) The Petitioner’s objection is over-ruled.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish an error in her assessment. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. A property’s market value-in-use as determined using the Guidelines is presumed to be accurate. *See MANUAL* at 5; *Kooshtard Property, VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501,505 (Ind. Tax Ct. 2005) *reh’g den. sub. nom.*; *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that assumption with evidence that is consistent with the Manual’s definition of true tax value. *MANUAL* at 5. A

market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.

- c. In addition, for 2007, the assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d. The Petitioner first argues that her property is over-valued based on the sales prices of properties in her neighborhood. In support of this contention, the Petitioner presented three comparative market analyses prepared by McColly Real Estate, Remax Realty, and Century 21 respectively. All three reports used sales from 2005 and 2006 and resulted in values ranging from \$158,000 to \$162,900.
- e. In making her argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of her property. *See* MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f. Here, only the McColly report attempted to compare the properties and value the differences between them. In that report, the broker, Opal Williams, provided an adjustment for the living area, the size of the garage and the location of the various properties. Ms. Williams, however, did not appear and testify at hearing. Further, the report itself states that “all information herein has not been verified and is not guaranteed.” In response to the Respondent's questions, Ms. Risner admitted that the CMAs were not prepared by appraisers. *Id.* Moreover, she testified that they had no appraisal education and had no experience in adjusting sales. *Id.* Finally, when Mr. Potts asked the Petitioner about the basis for Ms. William's \$20,000 adjustment for

location, Ms. Risner testified that she did not make the adjustment because it was not her CMA. *Id.*

- g. While the adjustments in the McColly comparative market analysis may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. The broker in the McColly report, however, is not a licensed appraiser in Indiana. Further, she did not certify that the opinion she prepared for the Petitioner complied with USPAP in performing her valuation analysis. In fact the report specifically states that the data was not even verified. Ms. Williams did not appear to testify as to the basis for her adjustments. Nor did her report identify the data upon which such adjustments were made. The Board therefore finds that the Petitioner's sales comparable analyses are insufficiently reliable to be probative of the property's market value-in-use.
- h. Ms. Risner also contends that her lot and her property as a whole are over-assessed compared to the assessed values of other properties in her neighborhood. In support of this contention, the Petitioner provided assessment information for six vacant parcels and 26 improved properties in her subdivision. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- i. The Petitioner therefore failed to raise a prima facie case. Where a Petitioner has not supported her claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Here, however, the Respondent argues that the assessed value of the Petitioner's property should be increased to its original \$190,200 assessed value. In support of this contention, the Respondent presented a chart with data from five sales. Mr. Potts adjusted his comparable sales for time using .5% per month, or 6% per year, which he admitted was an extraordinary assumption. In addition he adjusted the sales

for living area and garage size. Mr. Potts testified that he merely adopted the Petitioner's broker's values in his adjustments. The Respondent also submitted a list of sixteen additional sales. Mr. Potts did not attempt to describe the similarities or value the differences between the properties in these sales.

- j. To rebut or impeach a petitioner's case, a respondent has the same burden to present probative evidence that the petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that a comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted). Here, the Respondent's sales comparable analysis suffers the same infirmities as the Petitioner's analysis. He provided no evidentiary basis to support the values he assigned to adjust for the differences between the comparable properties. Therefore, the sales comparable analysis is not probative of the property's market value-in-use and the Board will not rely upon the Respondent's analysis to order a change in the assessment.

Conclusion

16. The Petitioner failed to establish a prima facie case that her property is over-valued. The Respondent likewise failed to prove the assessed value should be increased. The Board finds the true tax value of the property should remain at \$174,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: September 16, 2009

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>